

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
The Calhoun School)	File No. SLD-258689
New York, New York)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: January 14, 2003

Released: January 15, 2003

By the Wireline Competition Bureau:

1. The Wireline Competition Bureau has under consideration a Request for Review filed by the Calhoun School (Calhoun), New York, New York.¹ Calhoun School seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject Calhoun's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we find that Calhoun's appeal was not untimely, and therefore grant Calhoun's Request for Review and remand to SLD for further consideration.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the

¹ Letter from Jennifer McMurray, The Calhoun School, to Federal Communications Commission, filed March 11, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible.⁶

3. On January 18, 2001, Calhoun filed a Funding Year 2001 application for discounts that included five funding requests, Funding Request Numbers (FRNs) 651455, 652768, 653037, 654216, and 654354.⁷ On July 23, 2001, SLD issued a Funding Commitment Decision Letter (FCDL) on July 23, 2001, approving four of Calhoun's requests, FRNs 651455, 652768, 653037, and 654216.⁸ The FCDL did not mention FRN 654354.⁹ Calhoun contacted SLD and was told to wait, because SLD sent out Funding Commitment Decision Letters on an on-going basis and that Calhoun's FRNs would be addressed on more than one FCDL.¹⁰

4. On October 15, 2001, Calhoun filed a letter again inquiring into the status of FRN 654354.¹¹ Calhoun stated that it had spoken with a client service representative who had said that FRN 654354 did not exist in SLD's data system.¹² Calhoun noted that, according to the Form 471 Receipt Acknowledgement Letter, FRN 654354 had been successfully entered into SLD's data system.¹³

5. In an electronic mail response, SLD stated: "The FRN 654354 is not listed on your Funding Commitment Decision Letter. Your RAL does NOT contain any decisions concerning your requests for discounts: the RAL reflects the SLD's acknowledgement of

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504(c).

⁷ FCC Form 471, The Calhoun School, filed January 18, 2001 (Calhoun Form 471). Letter from Schools and Libraries Division, Universal Service Administrative Company, to Alex Ragone, The Calhoun School, dated February 22, 2001 (rtn-471 Receipt Acknowledgement Letter). In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding years are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2001 and ends on June 30, 2002, previously referred to as Funding Year 4, is now called Funding Year 2001. The funding period that begins on July 1, 2002 and ends on June 30, 2003, is now known as Funding Year 2002, and so on.

⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Alex Ragone, The Calhoun School, dated July 23, 2001 (FCDL).

⁹ *Id.*

¹⁰ Request for Review at 1.

¹¹ Letter from Jennifer McMurray, The Calhoun School, to Schools and Libraries Division, Universal Service Administrative Company, filed October 15, 2001 (FRN 6543564 Status Inquiry).

¹² *Id.*

¹³ *Id.* Form 471 Receipt Acknowledgement Letter.

RECEIPT and SUCCESSFUL DATA ENTRY of your Form 471. . . . If you disagree with the SLD's decision on your FCDL, please submit a letter of Appeal.""

6. Calhoun appealed this letter to SLD on November 16, 2001.¹⁵ On November 19, 2001, SLD denied the appeal, stating that, because it was filed more than 30 days after the issuance of the FCDL, it was untimely." Calhoun then filed the pending Request for Review. In its Request for Review, Calhoun states that it did not file an appeal within 30 days of the FCDL because the FCDL did not grant or deny FRN 654354, and because Calhoun was informed that it should wait for a second FCDL to arrive.¹⁷

7. For appeals to SLD or to the Commission seeking review of SLD decisions issued before August 13, 2001 under section 54.720(b) of the commission's rules, the appeal must be filed with SLD or the Commission within 30 days of the issuance of the decision that the party seeks to have reviewed.¹⁸ For decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, requests for review must be filed with the Commission or SLD within 60 days of the issuance of the decision." Documents are considered to be filed with the Commission or SLD only upon receipt." The appeal deadline applies to all such requests for review filed by a party affected by a decision issued by SLD.

8. After reviewing the record, we find that Calhoun's SLD Appeal was not untimely under these rules. Although the SLD Appeal was filed more than 30 days after the issuance of the FCDL, we find that the FCDL was not the decision that Calhoun sought to review. The FCDL did not make any mention of the status or decision regarding FRN 654354. In addition, it would be inappropriate to imply such a decision merely by the absence of any mention of the FRN, because it is not always the case that an FCDL includes a determination with regard to all FRNs.²¹ We conclude that, where an FRN is not addressed in an FCDL, the time for appealing that FRN does not begin to run on the issuance of the FCDL. Instead, the appeal period runs

¹⁵ Electronic mail from Maria Vassallo, to Jennifer McMurray, dated October 16, 2001 (Response to Status Inquiry).

¹⁶ Letter from Jennifer McMurray, The Calhoun School, to Schools and Libraries Division, Universal Service Administrative Company, filed November 16, 2001 (SLD Appeal).

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jennifer McMurray, The Calhoun School, dated November 19, 2001.

¹⁸ Request for Review.

¹⁹ 47 C.F.R. § 54.720(b).

²⁰ See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002).

²¹ 47 C.F.R. § 1.7.

²² See SLD website, <<http://www.sl.universalservice.org/overview/fcdl.asp>> ("Once the Form 471 has been reviewed, the SLD issues one or more Funding Commitment Decision Letters (FCDLs) to both the applicant and the service provider, setting out its decisions for each funding request.").

from the issuance of the document giving notice of SLD's decision on the particular FRN at issue.

9. Here, the decisional document was the e-mail that SLD issued on October 16, 2001.²² This electronic mail effectively gave notice that FRN 654354 would not be addressed on a future FCDL and that Calhoun would have to appeal to obtain relief.²³ Therefore, Calhoun's SLD Appeal, filed on November 16, 2001, was timely.²⁴ Therefore, we reverse the Administrator's Decision on Appeal, and remand to SLD for it to address Calhoun's SLD Appeal on the merits. In doing so, we emphasize that we make no determination as to whether Calhoun is ultimately entitled to any relief.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91.0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91.0.291, and 54.722(a), that the Request for Review filed by the Calhoun School, New York, New York on December 7, 2001, IS GRANTED, and this matter is REMANDED to SLD for consideration of the Calhoun School's appeal on the merits.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

²² See Response to Status Inquiry.

²³ See *id.*

²⁴ *Id.*; SLD Appeal. Because SLD's electronic mail was issued after August 13, 2001, the applicable period was 60 days. See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. December 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002).